

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 98-0240P**  
**Use Tax**  
**Calendar Years 1994, 1995, 1996**

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**ISSUE**

I. **Tax Administration** - Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a full-service wholesale distributor of pharmaceutical products and related health care services and products. Taxpayer has a distribution center in Indiana.

Taxpayer was audited for sales and use taxes for calendar years 1994, 1995, and 1996. The auditor assessed use tax for fixed assets used at the taxpayer's distribution center in Indiana as no manufacturing exemption is available to the taxpayer.

I. **Tax Administration** – Penalty

**DISCUSSION**

At issue is whether the taxpayer was negligent in remitting tax due.

Taxpayer made purchases of fixed assets where sales tax was not paid at point of purchase and use tax was not self-assessed. 45 IAC 2.2-3-20 clearly states that the purchaser must remit the use tax.

Taxpayer argues that given the relatively small error percentage and circumstances surrounding those errors; i.e., only 25 invoices totaling \$181,505.70 were found to be taxed incorrectly, it did not exhibit the necessary negligence or disregard for its tax responsibility.

A review of the audit indicates the taxpayer paid less than fifty percent (50%) of the tax due, and the assessment is for fixed asset purchases that should have been self-assessed.

The department finds the taxpayer was negligent in remitting use tax due on purchases of fixed assets.

### **FINDING**

Taxpayers protest is denied.